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October 17, 2014

Gregg McLean Adam
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VIA E-MAIL AND U.S. MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: alex.gurza@sanjoseca.gov

Re: Retiree Healthcare Contribution Rates (9.5% to 10%)
File No.: 040856

Dear Alex:

Thank you for your letter of October 14. We are heartened by your suggestion that the parties use the meeting to discuss joint statement of the issue, etc., as an opportunity to discuss settlement.

The POA had hoped to settle this issue from the outset. To that end, we first raised this issue with the City back in May, informally. When the City explained that the actions of the Retirement Board could not be unilaterally undone by the City, the POA agreed not to present its grievance, and to give the City an opportunity to approach the Retirement Board at a regularly scheduled meeting potentially to try to resolve the dispute. We agreed to a number of extensions to give the City adequate time to consider the issue. Only when the City announced it would not reconsider the increase to 10% did we file a grievance.

Again, we will approach the next meeting in the spirit of resolving this without the need for arbitration.

I do want to address the assertions in the third paragraph of your letter. The inference appears to be that I agreed to the increase in retirement contributions in a February 5 call with Jennifer. I recall the conversation with Jennifer. It was telephonic, it was fleeting, and occurred late in the afternoon as I drove through Golden Gate Park in San Francisco (so it probably did not occur *before* a Retirement Board meeting). I am not sure it happened on February 5.

CBM-SF/SF641321-1

Alex Gurza

Re: Retiree Healthcare Contribution Rates (9.5% to 10%)

October 17, 2014

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Jennifer wanted to confirm that the POA agreed that while the current MOA remained in effect, the retiree healthcare contribution could not exceed 10%. I agreed that was the cap in the MOA. We also discussed the testimony in the Measure B trial, including yours, as it pertained to what 50/50 contributions would be were it not for the cap. I have no recollection of Jennifer advising me that the City intended to raise contribution rates. The whole conversation probably lasted less than 2 minutes.

And you will recall that as soon as the POA did learn of a plan to increase rates, I wrote at length to the City on May 6 laying out the POA's objections. A copy of my May 6 letter is enclosed.

Janine will reach out with a date when we can meet to discuss settlement.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

Enclosure

cc: Ed Shikada, City Manager
Richard Doyle, City Attorney
Larry Esquivel, Chief of Police
Edgardo Garcia, Assistant Chief of Police
Jennifer Schembri, Deputy Director Employee Relations
Nora Frimann, Assistant City Attorney
Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA
Franco Vado, Chief Financial Officer, San Jose POA

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May 6, 2014

Gregg McLean Adam
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VIA EMAIL AND U.S. MAIL

Jennifer Schembri
Deputy Director Employee Relations
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

**Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare
and Dental Contribution Rates**
File No.: 040278

Dear Jennifer:

I wanted to follow up our phone conversation on Friday and the recent announcement by the Retirement Board of contribution rates for retiree healthcare and dental for active officers. As I mentioned on Friday, and as discussed in greater detail below, the POA is concerned that the City will attempt to unilaterally implement an increase in contribution rates.

The POA's position is that the MOA precludes any further *automatic* increase.

The 2013 Rates

Pursuant to San Jose Police and Fire Retirement Board Resolution No. 3761, effective June 23, 2013, Police members were paying (1) a "Medical Benefit Rate of Contribution" ("the medical rate") of 9.11%, and (2) a "Dental Benefit Rate of Contribution" ("the dental rate") of 0.40% – for a total contribution rate of 9.51%.

The Proposed 2014 Rates

Resolution No. 3800 proposes to increase the medical rate to 9.50% and the dental rate to 0.50% – for an increased total contribution rate of 10%.

Jennifer Schembri

Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare and Dental Contribution Rates

May 6, 2014

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The MOA Does Not Allow a Further Automatic Rate Increase

"Retiree Healthcare Funding" is governed by Article 50 of the MOA between the City and the POA. Article 50.3 is clear that the agreement to pre-fund the ARC was to be made in "five steps." The first was in June 2009, the fifth was in June 2013. While the total member contribution is capped at 10% under the MOA, the MOA does not itself mandate that a 10% contribution rate be paid automatically. There is no provision for a "sixth step" to increase contribution rates to 10%.

Instead, there is a specific process in Article 50.4 to address the circumstance when the "*calculated* Plan member ... contributions exceed 10% of pensionable pay" and when the City contributions "exceed 11% of pensionable pay." [Underline and italics added.]

I want to confirm your generous agreement to add this topic, at late notice, to those that City and POA representatives will discuss at our previously scheduled meeting on May 15.

The POA intends to resolve this issue collaboratively. However, since the City has wielded grievance timelines so often as a sword, I would be remiss in not seeking to secure from you a commitment to toll any grievance timelines pending that meeting. (While the POA would argue that no grievable action has yet taken place—i.e., the City has not announced *its intention* (as one of the contracting parties) to implement the changes proposed in the Resolution—you can understand my desire to avoid unnecessary procedural disputes as we try to focus on large common problems.

I look forward to: (1) your confirmation of the inclusion of this issue for discussion on the 15th; (2) your agreement to toll grievance timelines; and (3) (assuming (1)) the City's position on the above at our meeting.

Jennifer Schembri

Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare and Dental
Contribution Rates

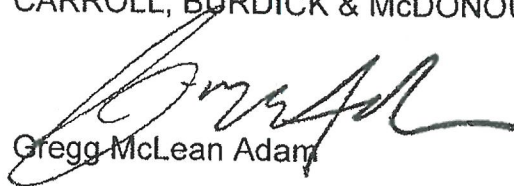
May 6, 2014

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I copy Retirement Board Chair Sean Kaldor and counsel Harvey Leiderman in
order to keep them in the loop.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jag

cc. Sean Kaldor, Chair
Harvey Leiderman, Esq., Counsel for P&F Retirement Board
Jim Unland, President, SJPOA
John Robb, Vice President, SJPOA
Franco Vado, Chief Financial Officers, SJPOA